SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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May 8, 2009

(VIA E-FILE)

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Submitted : May 1, 2009
Decided: May 8, 2009

RE: *Forrest Blankenship and Linda Blankenship v. State Farm Mutual Automobile Ins.*
C.A. No.: 08C-03-127 FSS

Upon Defendant's Motion *in Limine* – **GRANTED**

Dear Counsel:

This action for UIM benefits is set for trial on Monday. At trial, Plaintiffs want to introduce PIP payments made by Defendant to Plaintiff. Plaintiffs regard those PIP payments as an admission that Plaintiff's medical treatment was reasonable, necessary and related to the accident. This decides Defendant's motion *in limine* to exclude that evidence.

Plaintiff, Forrest Blankenship, allegedly suffered back injuries from an automobile collision on June 8, 2004. Plaintiff received the available policy limits from the tortfeasor and $100,000 in PIP benefits from Defendant, Plaintiff's carrier. Defendant paid the maximum PIP benefits under Plaintiff's policy without requesting an IME.

After Plaintiff received his PIP benefits, he filed this action for UIM benefits. After it made PIP payments, but before paying UIM benefits, Defendant obtained an IME. Based on that, Defendant now claims that Plaintiff's injuries are not related to the 2004 collision. Plaintiff seeks to contradict Defendant by introducing the previous PIP payments.

Defendant filed its motion on March 23, 2009, claiming that the PIP benefits made to Plaintiff are inadmissible under Delaware Uniform Rules of Evidence and 10 *Del. C.* § 4317.[1] Defendant argues that according to § 4317, PIP payments are inadmissible in any claim related to the 2004 collision. Additionally, Defendant cites several cases supporting the proposition that PIP and UIM claims must be litigated separately and, therefore, PIP evidence is inadmissible in a UIM claim.

In response, Plaintiff distinguishes Defendant's cases. Nevertheless, Plaintiff fails to offer any law to support his claim. Plaintiff also alleges that § 4317 is inapplicable because Defendant's payments were made as a contractual obligation, and not simply an "accommodation."

On May 6, 2009, Plaintiff filed supplemental briefing, reiterating his positions presented at oral argument. Plaintiff also alleges that because Defendant paid policy limits, the PIP payments were neither "advance" nor "partial," they were total. That means, according to Plaintiff, the PIP payments do not fall under § 4317.

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[1] *See infra.*

The answer to this narrow issue is plainly addressed in § 4317, which governs "admissibility of accommodation payments for personal injury." That section, in pertinent part, reads:

> No advance payment or partial payment of damages made by . . .[an] insurer as an accommodation . . . under liability insurance . . . shall be construed as an admission of liability . . . or of the insurer's recognition of such liability, with respect to such injured . . . person . . . or with respect to any other claim arising from the same accident or event.

This parties agree that PIP payments are a form of "liability insurance" covered under this statute.[2] The fact that PIP payments are "mandatory upon the showing of bills, rather than voluntary, does not make it any less of an accommodation."[3] "Accommodation" is applied broadly and controls full or partial PIP payments. Consistent with the No-Fault statute's[4] purpose, § 4317 encourages prompt payment without protest. There is no reason to construe the statute differently and undermine its clear purpose.

Even if § 4317 did not apply, the payments still do not amount to an admission. The court appreciates that, like UIM benefits, PIP benefits are only justified if they are reasonable, necessary and related to the collision. Even so, the context of PIP and UIM benefits is different. Admitting the PIP payments invites collateral litigation over the carrier's corporate thinking. Meanwhile, the risk of unfair prejudice or confusion is too great.

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[2] *See Janocha v. Candeloro*, 542 A.2d 357 (Del. 1988) (TABLE); *Sawczuk v. State Farm Auto. Ins. Co.*, 1985 WL 189269 (Del. Super. Sept. 12, 1985); *Snavely v. Auto. Ins. Co. of Hartford*, 438 A.2d 1229, 1232 (Del. Super. 1981).

[3] *Tucker v. Jarman*, 1980 WL 332941, *2 (Del. Super. Dec. 19, 1980).

[4] 21 *Del. C.* § 2118.

The PIP payments, made before the UIM claim, fall under 10 *Del. C* § 4317 or the rules of evidence and may not be used as an admission in this UIM trial. Therefore, Defendant's motion *in limine* is **GRANTED.**

IT IS SO ORDERED.

Very Truly Yours,

/s/ Fred S. Silverman

cc: Prothonotary